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Friday, October 3rd, 2003

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ALERT: COURT REVERSES MICHIGAN DIRECT SHIPPING BAN

Filed on August 28, 2003



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Dear Client:

A federal appeals court today reversed a lower court's decision which upheld the state of Michigan's ban on direct shipping of alcoholic beverages to consumers.

The 6th Circuit Federal Court of Appeals in Detroit reversed a district court decision, which was brought by wine drinkers.

IN-STATE EXEMPTION STRIKES AGAIN. As usual, the case turned on Michigan's laws which banned interstate direct shipping but allowed direct shipping for in-state wineries. This overturned case, again, sets up a conflict with the 7th Circuit Court of Appeals which upheld Indiana's ban on direct shipping, further setting the stage for a Supreme Court showdown.

Beer Business Daily's regular legal expert Drew Jaglom of Tannenbaum Helpert Syracuse & Hirschtritt LLP has repeatedly warned in these pages and elsewhere that these in-state exemptions are the weak link in state three tier regulations, as they are readily seen by judges to violate Commerce Clause provisions.

In our July 9th issue, Drew wrote that the "solution seems clear to me. Beer and wine wholesalers should seek legislation eliminating the protectionist exemptions for in-state wineries and brewers that are the real threat to maintaining the three-tier system, and replacing them with exemptions for the small-scale producers that are most likely to have difficulty obtaining distribution.

"The Commerce Clause problem goes away, most local producers remain protected, but in a constitutionally permitted manner, and consumers benefit from a broader range of choices while maintaining the three-tier system for substantial brands..... I fear the loss of the three-tier system from the fatally flawed laws that exist now, with their constitutionally defective in-state exemptions, far more than I do the consequences of a limited direct shipment right for small producers." Meanwhile.....

TEXAS NOT TO APPEAL. I was going to put this in tomorrow's issue, but as long as I'm on this topic..... As expected, the Texas ABC has decided not to appeal the 5th Circuit Court's decision making direct shipping legal in that state, given the tongue lashing the judges gave the TABC lawyers, saying it was "not even close" (see BBD 06-30-03 and BBD 07-14-2003).

The state Attorney General could still take action, but that is not likely. A more likely scenario is that the state legislature could patch the problem at the next session. Meanwhile, state TABC officials are sorting out which areas of Texas are dry, which are wet, and setting up rules for wine direct shippers for the state.

Until tomorrow, Harry

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